

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JUAN HUMBERTO CASTILLO-ALVAREZ, Plaintiff, v. SHERIFF ROGER HAWKINSON, GOVERNOR TIM PAWLENTY. Defendants.	Case No. 16-cv-3007 (JRT/LIB) ¹ REPORT AND RECOMMENDATION
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This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiff Juan Humberto Castillo-Alvarez commenced this action by filing a Complaint seeking relief for alleged violations of his civil rights under 42 U.S.C. § 1983. [Docket No. 1]. Castillo-Alvarez did not pay the required filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis* (“IFP”). [Docket Nos. 2, 3]. In an Order dated November 10, 2016, this Court required Castillo-Alvarez to file an amended IFP application that included the certified prison trust account information and to calculate and pay the initial partial filing fee. [Docket No. 7]. Plaintiff was given thirty days from the November 10, 2016, Order to comply with that Order. [Docket No. 7]. Plaintiff was cautioned that, if he failed to comply with

¹ Due to the retirement of Magistrate Judge Janie S. Mayeron, this case was reassigned to Magistrate Judge Leo I. Brisbois. [Docket No. 8].

this Court's Order, it would be recommended that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). [Docket No. 7].

That deadline has now passed, and Plaintiff has not filed an amended IFP application or paid the required filing fee. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See, Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: December 21, 2016

s/Leo I. Brisbois
LEO I. BRISBOIS
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.